BAIL SLIP

The Appellant in C.A.No.733/99 herein namely Ramesh (Accused in S.C.No.33/98 on the file of the Principal Sessions Judge, Dharmapuri at Krishnagiri was directed to be released on bail as per order of this Court dated 15.10.1999 and made in crl.M.P.No.7989/1999.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.07.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 733 OF 1999

Ramesh .. Appellant/Accused

- Vs -

State by
Inspector of Police
Hosur Town Police Station. .. Respondent/Complainant

Appeal preferred against the conviction and sentence passed by the learned Principal Sessions Judge, Dharmapuri at Krishnagiri, made in S.C. No. 33 of 1998 dated 19.7.99 as stated therein.

For Appellant : Mr. B.S.Jyothi Raman

For Respondent : Mr. S.Jayakumar, APP

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

The sole accused in a case of murder and on being found guilty as per the charge and awarded life imprisonment by the Court of Sessions, Dharmapuri, in S.C. No.33 of 1998, has brought forth this appeal.

2. The short facts, excepting the unnecessary details, for the disposal of this appeal are as follows :-

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The deceased Narayanappa was the son of one Chakkappa. P.W.6 is the wife of the deceased. The deceased is the junior paternal uncle of P.W.1. The accused is his cousin brother. The accused, Ramesh is the son of Bairappa. The grand-daughter of Chakkappa was given in marriage to the accused. About fifteen years prior to the occurrence, Chakkappa executed a Will in respect of all of his properties in favour of Sujatha, the wife of Ramesh and thus there arose a quarrel among the parties. A panchayat was convened and as per the decision of the panchayat, the entire property was sold by all the three, namely, the deceased, the accused and Sujatha. Out of the sale proceeds, Rupees One Lakh was the remainder. There was a quarrel among the deceased and the appellant in respect of the amount of Rupees One Lakh. The appellant was demanding that he should keep that amount of Rupees One Lakh exclusively, to which course the deceased was not amenable.

3. On 3.10.94 at about 7.00 p.m., P.W.s 1, 2 and the deceased left from Peria Yelagiri to Hosur to witness a night show. They entered the cinema theatre and were witnessing the show. The appellant was also witnessing the said show. P.W.3 was the Manager and P.W.4 was the watchman of the theatre. While P.W.s 1, 2 and the deceased came out of the theatre after the show, the deceased went to bring his TVS Moped. At that time, the appellant suddenly sprung on the deceased with a knife, M.O.1, and stabbed him indiscriminately. When P.W.s 1 and 2 tried to interfere, they were also intimidated by him. Thereafter, the appellant left the place of occurrence. P.W.s 1 and 2 went to Hosur police station where P.W.9, the Sub-Inspector of Police was on duty. At about 1.00 a.m., P.W.1 gave a complaint, Ex.P-1 to P.W.9, on the strength of which a case came to be registered in crime No.506/94. The express first information report, Ex.P-12 was despatched to court and the Inspector of Police was informed about the registration of a crime.

4. On receipt of a copy of the printed first information report, P.W.11, the Inspector of Police, Hosur, took up investigation. He proceeded to the scene of occurrence, made an inspection in the presence of witnesses, prepared an observation mahazar, Ex.P-2 and drew a rough sketch, Ex.P-13. He conducted inquest over the dead body of the deceased in the presence of witnesses and panchayatadars and prepared inquest report, Ex.P-14. After inquest the dead body was sent to the Government Hospital along with a requisition through a police constable for conducting autopsy.

5. On receipt of the requisition, P.W.7, the doctor attached to the Government Hospital, conducted autopsy on the dead body of the deceased and found the following injuries :-

"1) Lacerated wound 5 x 3 x 1 cm extending till outer surface of skull (L) parieto frontal region.

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2) Lacerated wound 1 x ½ x ½ cm (L) eyelid.
3) Lacerated wound 2 x ½ x 1 cm front of neck.
4) Lacerated wound 2 x ½ x 2 cm above medial part of (L) collar bone.
5) Lacerated wound 2 x ½ x ½ cm base of (L) thumb dorsum.
6) Lacerated wound 5 x 3 x ½ cm (L) hand dorsum.
7) Incised wound 1 x ½ x ½ cm (R) side of neck.
8) Incised wound 2 x ¼ cm x skin deep front of neck.
9) Incised wound 2 x 1 x 1 cm (L) shoulder region.
10) Lacerated wound (2 nos.) 1 x ½ x ½ cm each (L) groin.
11) Abrasion ½ x ½ cm on dorsum of penis.
12) Incised wound 2 x 2 x 4 cm deep (L) parasternal region.
13) Multiple abrasion ½ x ¼ cm each epigastric & umbiligal region.
14) Abrasion 1 x 1 cm back of (R) elbow."

The doctor issued Ex.P-7, the post-mortem certificate, opining that the deceased would have died of multiple injuries including injury to vital organs and heart about 14 to 16 hours prior to autopsy.

6. Pending investigation, the accused was arrested on 8.10.94. The appellant volunteered to give a confessional statement, the admissible portion of which is marked as Ex.P-4, on the strength of which M.O.1, knife, was recovered. The appellant was thereafter sent to court for remand. The material objects recovered from the scene of occurrence, from the dead body of the deceased and M.O.1, the knife recovered pursuant to the confession of the accused were subjected to analysis and the chemical analysis report, Ex.P-10 and serologist's report, Ex.P-11 were received by the court. On completion of the investigation, the investigating officer filed the final report before the committal court against the accused. On committal, the trial court framed the necessary charges against the accused under Sections 302, 341 and 506 (II) IPC.

7. In order the substantiate the charges levelled against the appellant, the prosecution marched eleven witnesses and relied on fifteen exhibits and nine material objects. On completion of the evidence on the side of the prosecution the accused was questioned under Section 313 Cr.P.C. in respect of the incriminating circumstances found in the evidence of the prosecution witnesses. He denied them as false. No defence witness was examined nor any documents were marked. After hearing the arguments advanced by either side and on scrutiny of the recorded evidence, the trial court found the accused guilty under Section 302 IPC and awarded life imprisonment, which is the subject matter of challenge before this Court.

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8. Learned counsel appearing for the appellant inter alia made the following submissions. According to the prosecution, P.W.s 1 and 2 were the eye witnesses. The occurrence had taken place in a theatre, but no independent witness was examined. P.W.3, the manager of the theatre and P.W.4, the watchman of the theatre, who were examined, turned hostile and thus what was available for the prosecution was the evidence of P.W.s 1 and 2. Both P.W.s 1 and 2 were closely related to the deceased and thus they were interested witnesses. Their testimony, if carefully scrutinised, the trial court should have rejected their evidence outright. According to P.W.6, the wife of the deceased, he took ragi food at about 7.00 p.m. and then the deceased left along with P.W.s 1 and 2. According to P.W.s 1 and 2, they took only coffee before witnessing the film. P.W.7, the doctor, who conducted autopsy deposed that 250 ml of undigested ragi food was found in the stomach and according to the doctor the normal digestion for ragi food is four hours and, therefore, the above evidence of the doctor shows that the occurrence could not have taken place at 0030 hours, since the deceased had consumed food at 7.00 p.m., and met his end at 0030 hours, which is more than five hours and, therefore, P.W.s 1 and 2 could not have witnessed the occurrence. It is also the evidence of P.W.6 that police personnel came to her residence and got her statement and this would clearly indicate that Ex.P-1 alleged to have been given by P.W.1 on which a case came to be registered has to be false and the statement of P.W.6 would have been the first information statement, which the prosecution has suppressed for reasons best known to them. Added further the learned counsel that M.O.1 could not have been recovered pursuant to the confessional statement alleged to have been recorded by the investigating officer at the time of investigation for the simple reason that M.O.1 was found at the place of occurrence. That apart, the medical evidence also do not support the case of the prosecution and the recovery also has been proved to be false. In such circumstances, the trial court should have rejected the prosecution case, but has erroneously found the appellant guilty and, hence, the appellant is entitled for an acquittal and the judgment of the trial court has got to be set aside.

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9. We have heard the learned Addl. Public Prosecutor appearing for the State on the above contentions and also perused the recorded evidence, both oral and documentary.

10. It is not in controversy that Narayanappa succumbed to the injuries in front of a theatre at Hosur at 0030 hours on the date of occurrence. The prosecution has brought forth sufficient evidence through the evidence of P.W.7, the doctor, who conducted autopsy and the post-mortem certificate, Ex.P-7, to hold that Narayanappa died due to homicidal violence. The fact that the deceased died on account of homicidal violence was neither disputed before the trial court nor it is disputed before this Court. Hence, on the medical evidence, this Court

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holds that the deceased, Narayanappa, died on account of homicidal violence.

11. In order to substantiate the charges levelled against the appellant that he stabbed the deceased in front of the theatre, the prosecution marched four witnesses. It is true that out of the four witnesses, P.W.s 3 and 4 turned hostile, but the prosecution had to its benefit the evidence of P.W.s 1 and 2. It is true that they were closely related to the deceased. It was the case of the prosecution that the deceased accompanied by P.W.s 1 and 2 went to the theatre to witness a night show and at the end of the show the occurrence had taken place outside the theatre. It is quite natural for P.W.s 1 and 2, who accompanied the deceased, to speak about the occurrence. The narration given by P.W.s 1 and 2 as to the occurrence would clearly indicate that they were witnesses to the occurrence and their evidence is quite natural and it has to be necessarily accepted.

12. One other strong circumstance in favour of the prosecution is that the occurrence has taken place at 0030 hours in front of a theatre and P.W.1 had gone to the police station accompanied by P.W.2 and gave his complaint, Ex.P-1 at 1.00 a.m. (i.e.) within thirty minutes from the time of occurrence and the case came to be registered by P.W.9. It is also pertinent to point out that the first information report has also reached the Magistrate at his residence at 3.00 a.m. A reading of the first information report would clearly indicate that the entire narration of the event and the participation of the accused in the crime has been clearly stated.

13. The contention put forth by the learned counsel for the appellant that since the doctor found 250 ml of undigested ragi food in the stomach of the deceased and since the normal time for digestion of ragi food is four hours, and even according to the evidence of the prosecution witnesses the deceased had taken ragi food at 7.00 p.m. and later he had only coffee, the evidence of P.W.s 1 and 2 has got to be rejected since the occurrence had taken place at 0030 hours (i.e.) more than five hours after taking ragi food and, therefore, their evidence is not supported by medical evidence. This contention of the counsel has to be rejected for the simple reason that ragi food will not have quicker digestion and apart from that this cannot be the reason for rejecting the evidence of P.W.s 1 and 2.

14. Apart from that, the contention of the counsel that the medical evidence do not support the evidence of the prosecution witnesses has got to be rejected for the reason that the doctor has clearly opined that the deceased died out of multiple injuries including injury to vital organs and heart pursuant to the injuries sustained by him and M.O.1 has also been shown to the doctor and the doctor has also opined that all the injuries were possible by the use of M.O.1 and thus the medical evidence was in support of the prosecution case.

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15. It is true that the prosecution has not brought forth acceptable evidence in respect of the confession alleged to have been made by the accused and the consequent recovery of M.O.1, but that part of the evidence will not in any way mutilate the vigour or truth of the prosecution case as the prosecution has brought forth convincing and acceptable evidence as narrated above.

16. In the circumstances, the trial court has marshalled the evidence proper and has found the accused guilty for the offence of murder and has awarded life imprisonment and we do not see any reason for interfering with the conviction and sentence imposed on the appellant. This Court is of the considered opinion that the contentions put forth by the learned counsel for the appellant are hackneyed and the desperate claims have got to be rejected and accordingly they are rejected.

17. In the result, the appeal fails and the same is dismissed and the judgment of the trial court is confirmed. It is reported that the appellant is on bail. The learned Sessions Judge is directed to take steps to secure the appellant and commit him to prison to serve the remaining period of sentence imposed upon him.

GLN

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1) The Judicial Magistrate No.II, Hosur.
2) -do-Thro' The Chief Judicial Magistrate, Krishnagiri.
3) The Principal Sessions Judge, Dharmapuri @ Krishnagiri.
4) The District Collector, Dharmapuri District.
5) The Director General of Police, Chennai.
6) The Public Prosecutor, High Court, Madras.
7) The Superintendent of Central Prison, Vellore.
8) The Inspector of Police, Hosur Town Police Station.
+1 CC to Mr.B.S.Jothiraman, Advocate, SR No.30952.

TEJ(C.O)
BG/04.08.2005.

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